

1 Rule 4-906. Guardian ad litem program.

2 Intent:

3 To establish the responsibilities of the Guardian ad Litem Oversight Committee
4 established in Rule 1-205.

5 To establish the policy and procedures for the management of the guardian ad litem
6 program.

7 To establish responsibility for management of the program.

8 To establish the policy and procedures for the selection of guardians ad litem.

9 To establish the policy and procedures for payment for guardian ad litem services.

10 To establish the policy and procedures for complaints regarding guardians ad litem
11 and volunteers.

12 Applicability:

13 This rule shall apply to the management of the guardian ad litem program.

14 This rule does not affect the authority of the Utah State Bar to discipline a guardian
15 ad litem.

16 Statement of the Rule:

17 (1) Guardian ad Litem Oversight Committee. The Committee shall:

18 (1)(A) develop and monitor policies of the Office of the Guardian ad Litem to:

19 (1)(A)(i) ensure the independent and professional representation of a child-client and
20 the child's best interest; and

21 (1)(A)(ii) ensure compliance with federal and state statutes, rules and case law;

22 (1)(B) recommend rules of administration and procedure to the Judicial Council and
23 Supreme Court;

24 (1)(C) as requested by the Judicial Council, assist in selecting the Director of the
25 Office of the Guardian ad Litem;

26 (1)(D) develop a performance plan for the Director;

27 (1)(E) monitor the Office's caseload and recommend to the Judicial Council
28 adequate staffing of guardians ad litem and staff;

29 (1)(F) develop standards and procedures for hearing and deciding complaints and
30 appeals of complaints; and

(1)(G) hear and decide complaints and appeals of complaints as provided in this rule.

~~(1)(2)~~ Appointment of director. The Judicial Council shall appoint the Director of the Office of Guardian Ad Litem. The Director shall have the qualifications provided in Utah Code Section §78-3a-911.

~~(2)(3)~~ Responsibilities of the director. In addition to responsibilities under Utah Code Section §78-3a-911, the Director shall have the following responsibilities.

~~(2)(A) (3)(A)~~ Manage the Office of Guardian ad Litem to ensure that minors who have been appointed a guardian ad litem by the court receive qualified guardian ad litem services.

~~(2)(B) (3)(B)~~ Develop the budget appropriation request to the legislature for the guardian ad litem program.

~~(2)(C) (3)(C)~~ Coordinate the appointments of guardians ad litem among different levels of courts.

~~(2)(D) (3)(D)~~ Monitor the services of the guardians ad litem, staff and volunteers by regularly consulting with users and observers of guardian ad litem services, including judges, court executives and clerks, and by requiring the submission of appropriate written reports from the guardians ad litem.

~~(2)(E) (3)(E)~~ Determine whether the guardian ad litem caseload in Judicial Districts 1, 5, 6, 7, and 8 is best managed by full or part time employment or by contract.

~~(2)(F) (3)(F)~~ Select guardians ad litem and staff for employment as provided in this rule. Select volunteers. Coordinate appointment of conflict counsel.

~~(2)(G) (3)(G)~~ Supervise, evaluate, and discipline guardians ad litem and staff employed by the courts and volunteers. Supervise and evaluate the quality of service provided by guardians ad litem under contract with the court.

~~(2)(H) Recommend rules of administration and procedure governing the management of the guardian ad litem program to the Judicial Council and Supreme Court.~~

(3)(H) Monitor and report to the Committee guardian ad litem, staff and volunteer compliance with federal and state statutes, rules and case law.

~~(2)(I)-(3)(I)~~ Prepare and submit to the ~~Judicial Council Committee~~ in August an annual report regarding the development, policy, and management of the guardian ad litem program and the training and evaluation of guardians ad litem, staff and volunteers. The ~~Judicial Council Committee~~ may amend the report prior to release to the Legislative Interim Human Services Committee pursuant to Utah Code Section §78-3a-911.

~~(3)-(4)~~ Qualification and responsibilities of guardian ad litem. A guardian ad litem shall be admitted to the practice of law in Utah and shall demonstrate experience and interest in the applicable law and procedures. The guardian ad litem shall have the responsibilities established by Utah Code Section §78-3a-912.

~~(4)-(5)~~ Selection of guardian ad litem for employment.

~~(4)(A)-(5)(A)~~ A guardian ad litem employed by the Administrative Office of the Courts is an at-will employee subject to dismissal by the Director with or without cause.

~~(4)(B)-(5)(B)~~ A guardian ad litem employed by the Administrative Office of the Courts shall be selected by a committee consisting of the following officers:

~~(4)(B)(i)-(5)(B)(i)~~ the Director;

~~(4)(B)(ii)-(5)(B)(ii)~~ the trial court executive of the district court and juvenile court;

~~(5)(B)(iii) a member of the Committee;~~ and

~~(4)(B)(iii)-(5)(B)(iv)~~ a member of the Utah State Bar Association and a member of the public selected by the Director.

~~(4)(C) Prior to making a selection, the committee shall provide the name of the finalist to and invite comments regarding the finalist's qualifications from the judges and court commissioners of the judicial district in which the guardian ad litem will primarily practice.~~

~~(5)-(6)~~ Conflicts of interest and disqualification of guardian ad litem.

~~(5)(A)-(6)(A)~~ In cases where a guardian ad litem has a conflict of interest, the guardian ad litem shall declare the conflict and request that the court appoint a conflict guardian ad litem in the matter. Any party who perceives a conflict of interest may file a motion with the court setting forth the nature of the conflict and a request that the guardian ad litem be disqualified from further service in that case. Upon a finding that a

91 conflict of interest exists, the court shall relieve the guardian ad litem from further duties
92 in that case and appoint a conflict guardian ad litem.

93 ~~(5)(B)~~ (6)(B) The Administrative Office of the Courts may contract with attorneys to
94 provide conflict guardian ad litem services.

95 ~~(5)(C)~~ (6)(C) If the conflict guardian ad litem is arranged on a case-by-case basis,
96 the Court shall use the order form approved by the Council. The Order shall include a
97 list of the duties of a guardian ad litem. The court shall distribute the Order as follows:
98 original to the case file and one copy each to: the appointed conflict guardian ad litem,
99 the guardian ad litem, all parties of record, the parents, guardians or custodians of the
100 child(ren), the court executive and the Director.

101 ~~(5)(D)~~ (6)(D) A conflict guardian ad litem's compensation shall not exceed \$50 per
102 hour or \$1000 per case in any twelve month period, whichever is less. Under
103 extraordinary circumstances, the Director may extend the payment limit upon request
104 from the conflict guardian ad litem. The request shall include justification showing that
105 the case required work of much greater complexity than, or time far in excess of, that
106 required in most guardian ad litem assignments. Incidental expenses incurred in the
107 case shall be included within the limit. If a case is appealed, the limit shall be extended
108 by an additional \$400.

109 ~~(6)(7)~~ Staff and Volunteers.

110 ~~(6)(A)~~ (7)(A) The Director shall develop a strong volunteer component to the
111 guardian ad litem program and provide support for volunteer solicitation, screening and
112 training. Staff and volunteers shall have the responsibilities established by Utah Code
113 Section §78-3a-912.

114 ~~(6)(B)~~ (7)(B) Training for staff and volunteers shall be conducted under the
115 supervision of the attorney guardian ad litem with administrative support provided by the
116 Director. Staff and volunteers shall receive training in the areas of child abuse, child
117 psychology, juvenile and district court procedures and local child welfare agency
118 procedures. Staff and volunteers shall be trained in the guidelines established by the
119 National Court Appointed Special Advocate Association.

120 ~~(7) Complaints regarding guardians ad litem, staff and volunteers.~~

~~(7)(A) Any person may submit to the Director a complaint regarding a guardian ad litem, staff person or a volunteer. The Director may require that the complaint be submitted in writing. The complaint should state the nature of the complaint and the facts upon which the complaint is based.~~

~~(7)(B) If the complaint is by the client, the Director may meet separately or together with the complainant and the guardian ad litem, staff person or volunteer in an effort to resolve the complaint.~~

~~(7)(C) If the complaint is by any other person, the Director shall review the complaint and determine whether to invoke the complaint resolution process of paragraph (B).~~

~~(7)(D) This subsection (7) shall not apply to conflict guardians ad litem.~~

~~(8) Dispute between a guardian ad litem and volunteer.~~

~~(8)(A) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, the Director is to be informed if the dispute cannot be resolved.~~

~~(8)(B) A committee comprised of the Director, three guardians ad litem selected by the Director, and three volunteers selected by the Director shall review the dispute, conduct such investigation as it determines reasonable, and enter a determination regarding the resolution of the complaint. The determination may include removal of the guardian ad litem or volunteer from the case and appropriate discipline of the guardian ad litem or volunteer, which may include but is not limited to reprimand, suspension, or termination. The determination of the committee is binding on all participants.~~

~~(8)(C) This subsection (8) shall not apply to conflict guardians ad litem.~~

~~(9)(8) Private guardians ad litem.~~

~~(9)(A)-(8)(A)~~ The Director shall maintain a list of guardians ad litem qualified for appointment under Utah Code Section §78-7-45. The Director shall provide the list to ~~all~~ district court ~~and juvenile court~~ judges upon request.

~~(9)(B)-(8)(B)~~ To be included on the list a guardian ad litem shall:

~~(9)(B)(i)-(8)(B)(i)~~ apply for inclusion;

~~(9)(B)(ii)-(8)(B)(ii)~~ be a member in good standing with the Utah State Bar;

~~(9)(B)(iii)-(8)(B)(iii)~~ file permission and fingerprints for screening by the FBI and BCI;

~~(9)(B)(iv)–(8)(B)(iv)~~ be screened against the DCFS Child Abuse Data Base and the like data base of any state in which the appointee has resided;

~~(9)(B)(v)–(8)(B)(v)~~ complete initial and continuing training requirements established by the Director;

~~(9)(B)(vi)–(8)(B)(vi)~~ file a monthly report on assigned cases in a format approved by the Director;

~~(9)(B)(vii)–(8)(B)(vii)~~ be evaluated at the discretion of the Director for competent performance and minimum qualifications; ~~and.~~

~~(9)(B)(viii) sign an agreement to be removed from the list for failure to perform in a competent manner as determined by the Director or for failure to meet minimum qualifications.~~

~~(9)(C) A guardian ad litem appointed under §78-7-45 is subject to the complaint process provided in subsection (7) and the dispute resolution process provided in subsection (8).~~

~~(8)(C) Upon the appointment by the court of a guardian ad litem under Utah Code Section 78-7-45, the court shall:~~

~~(8)(C)(i) use the following language in its order: “The Court appoints a private attorney guardian ad litem to be assigned by the Office of Guardian ad Litem, to represent the best interests of the minor child(ren) in this matter.”; and~~

~~(8)(C)(ii) send the order to the Director c/o the Private Attorney Guardian ad Litem Program.~~

~~(8)(D) Upon receipt of the court’s order appointing a guardian ad litem, the Director shall contact and assign the case to an eligible attorney.~~

~~(8)(E) Upon accepting the court’s appointment, the assigned attorney shall file a notice of appearance with the court within five business days of acceptance, and shall thereafter represent the best interests of the minor(s) until released by the court.~~

~~(9) Complaints and appeals.~~

~~(9)(A) Any person may file with the chair of the Committee a complaint regarding the Director or the Office. The Committee shall enter a recommendation to the Judicial Council, which may include appropriate discipline of the Director. The failure of the Director to satisfactorily resolve a complaint against a guardian ad litem, private~~

guardian ad litem, staff person or volunteer is not grounds for a complaint against the Director.

(9)(B) Any person may file with the Director a complaint regarding a guardian ad litem, private guardian ad litem, staff person or volunteer. The decision of the Director is final.

(9)(C) If a guardian ad litem and a volunteer disagree on the major decisions involved in representation of the client, either may notify the Director that the dispute cannot be resolved. The decision of the Director is final.

(9)(D) With or without a complaint, the Director may remove a private guardian ad litem from the list of private guardians ad litem for failure to perform in a competent manner or for failure to meet minimum qualifications. The private guardian ad litem may appeal the Director's decision.

(9)(E)(i) A complaint and an appeal shall be in writing, stating the nature of the complaint and the facts upon which it is based.

(9)(E)(ii) In resolving a complaint, the Director or the Committee shall review the complaint and conduct such investigation as they decide is reasonable. In resolving the appeal of a decision in a complaint, the Committee shall review the complaint and conduct such investigation as it decides is reasonable. The Director or the Committee may meet separately or together with the complainant and the person against whom the complaint is filed.

(9)(E)(iii) The decision of the Director or of the Committee may include appropriate discipline of the person against whom the complaint is filed. If the complaint is against a private guardian ad litem, the decision may include removal of the private guardian ad litem from the list of private guardians ad litem and the conditions for reinstatement.

(9)(F)(iv) If an appeal of the decision of the Director is permitted, the appeal must be filed with the chair of the Committee within 30 days after receiving notice of the decision.

(9)(G) This subsection does not apply to conflict guardians ad litem.